IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 403 OF 2005

Rajendrakumar K. Sachani. ..Petitioner.

V/s.

Smt.Anita @ Sonam R. Sachani & Ors. ..Respondents.

Mr.Sagar A. Joshi for petitioner.

Ms.A.Bhaktawani for Hitesh Vyas for respondent No.1.

Mr.Rajesh More, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : NOVEMBER 23, 2005.

P.C. :

1. Heard counsel for the parties.

2. Grievance made before this court is that there was no occasion for the lower court to entertain the application under section 127 of the Criminal Procedure Code. The argument proceeds on the basis that the Civil Court has already decreed the suit filed by the respondents which directs the applicant to pay sum of Rs.4,500/- per month to respondent No.1 and Rs. 1,500/- per month to respondent No.2 respectively from the date of application and thereafter continue from month to month. If that amount is to be reckoned, question of

providing enhanced maintenance under section 127 of the Code does not arise.

2. The argument seems to be attractive, but it clearly overlooks the position that the decree passed by the Civil Court has been challenged before this court by the applicant by way of First Appeal No.1051 of 2003. The applicant has persuaded this court to pass interim order on certain condition. I am informed across the bar by the counsel for the respondent that the said condition has not been complied as no deposit has been made by the applicant in this court. Besides, no monthly payment is being offered as per the decree of the Civil Court. In other words, no amount towards monthly maintenance is being offered to the respondents either as per the order of the Civil Court or original order of the Magistrate passed under section 125 of the Code. In my opinion, having regard to the fact situation of the present case, this petition deserves to be dismissed with the observation that all payments made by the applicant in lieu of the order passed by the Magistrate under section 125 or for that matter under section 127 of the Code, will be without prejudice to the argument available to the applicant in the Civil proceedings of giving appropriate adjustment of

payment therefrom. Such directions will be in the interest of justice. This is so because, the technical argument advanced across the bar to contend that proceedings under section 127 of the Code was unavailable will be taken care of by the above arrangement, if the applicant succeeds in the Civil proceedings.

3. Accordingly, this application is disposed of with the above observations. All deposits made by the applicant in this court in the present proceedings be made over to the respondent No.1 and 2. The applicant shall forthwith comply with the directions of the Sessions Court under the impugned order till such further orders to be passed by this court in first appeal No.1051 of 2003.